

the date specified in the notice given to the employee is not invalid for that reason, except when it is challenged by a higher-standing employee in the competitive level who is reached out of order for a reduction in force action as a result of the change in dates.

(c) An agency must give an employee an amended written notice and allow the employee to decide whether to accept a better offer of assignment under subpart G of this part that becomes available before or on the effective date of the reduction in force. The agency must give the employee the amended notice regardless of whether the employee has accepted or rejected a previous offer of assignment, provided that the employee has not voluntarily separated from his or her official position.

[62 FR 62502, Nov. 24, 1997, as amended at 65 FR 25623, May 3, 2000]

#### § 351.806 Status during notice period.

When possible, the agency shall retain the employee on active duty status during the notice period. When in an emergency the agency lacks work or funds for all or part of the notice period, it may place the employee on annual leave with or without his or her consent, or leave without pay with his or her consent, or in a nonpay status without his or her consent.

#### § 351.807 Certification of Expected Separation.

(a) For the purpose of enabling otherwise eligible employees to be considered for eligibility to participate in dislocated worker programs under the Workforce Investment Act of 1998 administered by the U.S. Department of Labor, an agency may issue a Certificate of Expected Separation to a competing employee who the agency believes, with a reasonable degree of certainty, will be separated from Federal employment by reduction in force procedures under this part. A certification may be issued up to 6 months prior to the effective date of the reduction in force.

(b) This certification may be issued to a competing employee only when the agency determines:

(1) There is a good likelihood the employee will be separated under this part;

(2) Employment opportunities in the same or similar position in the local commuting area are limited or non-existent;

(3) Placement opportunities within the employee's own or other Federal agencies in the local commuting area are limited or nonexistent; and

(4) If eligible for optional retirement, the employee has not filed a retirement application or otherwise indicated in writing an intent to retire.

(c) A certification is to be addressed to each individual eligible employee and must be signed by an appropriate agency official. A certification must contain the expected date of reduction in force, a statement that each factor in paragraph (b) of this section has been satisfied, and a description of Workforce Investment Act of 1998, title I, programs, the Interagency Placement Program, and the Reemployment Priority List.

(d) A certification may not be used to satisfy any of the notice requirements elsewhere in this subpart.

(e) An agency determination of eligibility for certification may not be appealed to OPM or the Merit Systems Protection Board.

(f) An agency may also enroll eligible employees on the agency's Reemployment Priority List up to 6 months in advance of a reduction in force. For requirements and criteria, see subpart B of part 330 of this chapter.

[60 FR 2678, Jan. 11, 1995, as amended at 60 FR 44254, Aug. 25, 1995; 65 FR 64134, Oct. 26, 2000; 66 FR 29896, June 4, 2001]

### Subpart I—Appeals and Corrective Action

#### § 351.901 Appeals.

An employee who has been furloughed for more than 30 days, separated, or demoted by a reduction in force action may appeal to the Merit Systems Protection Board.

[52 FR 46051, Dec. 4, 1987]

#### § 351.902 Correction by agency.

When an agency decides that an action under this part was unjustified or

unwarranted and restores an individual to the former grade or rate of pay held or to an intermediate grade or rate of pay, it shall make the restoration retroactively effective to the date of the improper action.

### **Subpart J [Reserved]**

## **PART 352—REEMPLOYMENT RIGHTS**

### **Subpart A [Reserved]**

### **Subpart B—Reemployment Rights Based on Movement Between Executive Agencies During Emergencies**

Sec.

- 352.201 Letter of Authority.
- 352.202 Request for Letter of Authority.
- 352.203 Standards for issuing Letters of Authority.
- 352.204 Basic eligibility for reemployment rights.
- 352.205 Appeal of losing agency.
- 352.205a Authority to return employee to his or her former or successor agency.
- 352.205b Authority to return an SES employee to his or her former or successor agency.
- 352.206 Expiration of reemployment rights.
- 352.207 Exercise or termination of reemployment rights.
- 352.208 Agency's obligation to reemploy.
- 352.209 Employee appeals to the Merit Systems Protection Board.

### **Subpart C—Detail and Transfer of Federal Employees to International Organizations**

- 352.301 Purpose.
- 352.302 Definitions.
- 352.303 Effective date of equalization allowance.
- 352.304 International organizations covered.
- 352.305 Eligibility for detail.
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- 352.307 Eligibility for transfer.
- 352.308 Effecting employment by transfer.
- 352.309 Retirement, health benefits, and group life insurance.
- 352.310 Equalization allowance.
- 352.311 Reemployment.
- 352.312 When to apply.
- 352.313 Failure to reemploy and right of appeal.
- 352.314 Consideration for promotion and pay increases.

### **Subpart D—Employment of Presidential Appointees and Elected Officers by the International Atomic Energy Agency**

- 352.401 Purpose.
- 352.402 Coverage.

- 352.403 Definitions.
- 352.404 Retirement and insurance.
- 352.405 Resumption of Federal service.

### **Subpart E—Reinstatement Rights After Service Under Section 233(d) and 625(b) of the Foreign Assistance Act of 1961**

- 352.501 Purpose.
- 352.502 Coverage.
- 352.503 Definitions.
- 352.504 Basic entitlement.
- 352.505 Proposed termination.
- 352.506 Application for reinstatement.
- 352.507 Reinstatement.
- 352.508 Appeals to the Merit Systems Protection Board.

### **Subpart F [Reserved]**

### **Subpart G—Reemployment Rights of Former Bureau of Indian Affairs and Indian Health Service Employees After Service Under the Indian Self-Determination Act in Tribal Organizations**

- 352.701 Purpose.
- 352.702 Definitions.
- 352.703 Basic entitlement to reemployment rights on leaving Federal employment.
- 352.704 Duration of reemployment rights.
- 352.705 Return to Federal employment.
- 352.706 Agency response to reemployment application.
- 352.707 Employee appeals to the Merit Systems Protection Board.

### **Subpart H—Reemployment Rights Under the Taiwan Relations Act**

- 352.801 Purpose.
- 352.802 Definitions.
- 352.803 Basic entitlement to reemployment rights on leaving Federal employment.
- 352.804 Maximum period of entitlement to reemployment.
- 352.805 Position to which entitled on reemployment.
- 352.806 Return to Federal employment.
- 352.807 Appeals.

### **Subpart I—Reemployment Rights After Service With the Panama Canal Commission**

- 352.901 Purpose.
- 352.902 Definitions.
- 352.903 Effecting a detail or transfer.
- 352.904 Eligibility.
- 352.905 Employees on detail.
- 352.906 Termination of transfer.
- 352.907 Exercise or termination of reemployment rights.
- 352.908 Agency obligation.
- 352.909 Appeals.